IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 394 OF 1991.

The Special Land Acquisition
Officer, Pune. ... Appellant.

Versus.

1. Jagannath Kisanrao Bhoite.
2. Sanjay Jagannath Bhoite. .... Respondents.

FIRST APPEAL NO. 1035 OF 1994
WITH
CROSS OBJECTION.

The State of Maharashtra,
through the Special Land Acquisition
Officer No.12, Pune. ... Appellant.

Versus.

Gangadhar Keshav Golande
since deceased by his LRs.
1. Prabhakar Gangadhar Golande.
2. Madhukar Gangadhar Golande.
3. Ram Gangadhar Golande.
4. Nandkishor Gangadhar Golande.
5. Mukesh Gangadhar Golande.
6. Sou.Malti Prabhakar Aher.
7. Shobha Arvind Shete.
8. Godavari Gangadhar Golande.
9. Dattatray Gangadhar Golande.
(General Power of Attorney holder
for Nos.1 to 8.)
All residing at Daund, Taluka:
Daund, Dist. Pune. ... Respondents.

FIRST APPEAL NO. 1037 OF 1994.

The State of Maharashtra
through the Special Land
Acquisition Officer No.12, Pune. ... Appellant.
Versus.
Shri Vithal Narayan Takawade,
residing at Daund, Taluka:
Daund, Dist. Pune. ... Respondent.

FIRST APPEAL NO. 1038 OF 1994

The State of Maharashtra,
through the Special Land
Acquisition Officer No.12, Pune. ... Appellant.

Versus.

Saraswatibai Manikrao Deshmukh,
since deceased by her LRs.
1. Vijay Manikrao Deshmukh.
2. Mangala Shankarrao Patil.
3. Vimal Vasantrao Shirole.
4. Sumanmala Chandrakant Pakne.
5. Ranjani Vasantrao Jachak.
6. Prabhavati Prabhakar Shinde.
7. Pushpa Gopinath Patil.
through their Power of Attorney
Holders:
Vijay Manikrao Deshmukh,
All residing at Daund, Taluka
Daund, Dist. Pune. ... Respondents

FIRST APPEAL NO. 1039 OF 1994
WITH
CROSS OBJECTION ST.NO. 5806 OF 1995

The State of Maharashtra,
through the Special Land
Acquisition Officer No.12, Pune. ... Appellant.

Versus.

1. Pandurang Gangadhar Swami.
2. Balu Gangadhar Swami.
Both residing at Daund, Taluka
Daund, Dist. Pune. ... Respondents

FIRST APPEAL NO. 1044 OF 1994
WITH
CROSS OBJECTION

The State of Maharashtra,
through the Special Land
Acquisition Officer No.12, Pune. ... Appellant.

Versus.

Pandurang Barku Jathar,
residing at Daund, Taluka
Daund, Dist. Pune. ... Respondent.

AND

FIRST APPEAL NO.1047 OF 1994
WITH
CROSS OBJECTION

The State of Maharashtra
through the Special Land
Acquisition Officer No.12, Pune. ... Appellant.

Versus.

1. Kondiba Sawala Saste.
2. Genu Sawala Saste.
3. Sahebrao Sawala Saste.
4. Dattu Sawala Saste.
5. Baban Sawala Saste.
6. Rangubai Sawala Saste.
   Since deceased by her LRs.
   Appellant Nos.1 to 5.
7. Bhanudas Krishna Saste.
8. Manik Krishna Saste.
9. Ramu Krishna Saste.
10. Sonabai Raghu Darekar.
11. Banubai Gangarao Gholap.
12. Venubai Tukaram Suryawanshi.
13. Deubai Dyandev Khesare.
14. Dagadabai Sakharam Suryawanshi.
    All residing at Daund,
    Taluka Daund, Dist. Pune. ... Respondents.

Shri K.K.Tated, A.G.P. for the Appellant in all the Appeals.

Shri N.V.Walawalkar, Senior Advocate with Shri G.S.Keluskar for the Respondents in all the Appeals.

CORAM : ABHAY S. OKA, J.

DATED : 24th April 2006.

ORAL JUDGMENT.

1. These group appeals can be disposed of by a common judgment and order. The challenge in these appeals preferred by the State Government is to the awards made under section 18 of the Land Acquisition Act 1894 (hereinafter referred to as "the said Act"). It appears that the Reference Court decided the land acquisition references in a group and the main Judgment is delivered in Land Acquisition Reference No.207 of 1982 which is the subject matter of First Appeal No.394 of 1991. Therefore, reference has been made in this judgment only to the First Appeal No.394 of 1991.

2. The notification under section 4 of the said Act was issued in case of the lands subject matter of these Appeals on 9th October 1972. The acquisition was for the public purpose of office building, residential quarters and training ground of the State Reserve Police Force Group V and VI at Daund, District Pune. The Awards under section 11 of the said Act were made by the Special Land Acquisition Officer on 15th July 1982. For the purpose of fixing the market value, the Special Land Acquisition Officer divided the lands into three groups. The lands having assessment above Rs.1.88 per hectare were included in Group I. The lands having assessment

from Rs.0.95 to Rs.1.87 per hectare were included in Group II and the lands having assessment below Rs.0.95 per hectare were included in Group III. The Special Land Acquisition Officer awarded market value at the rate of Rs.10,000/- per hectare to the lands in Group I; market value at the rate of Rs.3500/- to the lands in Group II and the market value ranging between Rs.3000/- to Rs.5500/- per hectare for the lands in Group III. By the impugned judgment and award, the Reference Court has fixed the market value of the lands in Group I at 25 paise per sq.ft., lands in Group II at 15 paise per sq.ft. and lands in Group III at 9 paise per sq.ft.

3. Shri Tated, the learned A.G.P. appearing for the Appellants in these Appeals submitted that the market value fixed by the Reference Court is exorbitant. He submitted that the Reference Court has committed an error by relying upon the evidence of the expert examined by the Respondents-Claimants. he submitted that in case of all the acquired lands after fixing the market value, a deduction ought to have been made on account of development charges. Shri Walawalkar, learned Senior Counsel appearing for the Respondents supported the impugned Judgment and Award. There are cross-objections filed in some of the Appeals praying for statutory benefits under section 34 of the said Act.

4. I have considered the submissions. As stated earlier, the acquisition was in respect of vast tracks of lands from village Daund, Taluka Daund, District Pune for the purpose of office building, residential quarters and training grounds of the State Reserve Police, Group V & VII, Daund. The Claimants produced sale instances. The documents at Exhs.37 and 38 are sale deeds produced by the Claimants. The said sale deeds have been exhibited on the basis of the consent of the parties. The sale deed at Exh.37 is dated 9th August 1972 in respect of a land bearing Survey No.179/3B, admeasuring 41 Ares situated at Daund. The price fixed under the said sale deed is Rs.5000/-. Exh.38 is a sale deed dated 15th July 1972 in respect of an area of 81 Ares out of the same survey number where consideration is Rs.10,000/-.

5. It will be necessary to refer to the oral evidence led by the parties. The Claimants examined one Gangadhar Dattatray Karkare, an expert valuer. The report of the Expert Valuer has been exhibited at Exh.40. The expert has been examined at Exh.39. To the report at Exh.40 a map showing the location of the acquired lands has been annexed. He has described the potential of various lands at Daund. He stated that the

acquired lands which are the subject matter of the present Appeals were requisitioned by the Government of India in the year 1940-41 on account of second world war. He has divided the lands into two groups; one group of land having non-agricultural potential and the other group of lands having no N.A.potentiality which were agricultural lands. Apart from the sale deeds at Exhs.37 and 38, he relied upon the sale deeds at Exhs.43, 44, 45 and 46 which were exhibited on record of the Reference Court. The expert was cross-examined by the learned Government Pleader. The evidence of the expert has been extensively considered by the Reference Court. In paragraph 7 of his evidence Shri Gangadhar Karkare has stated that according to him the market value of the acquired lands in Group II was Rs.7/- per sq.meter i.e. 65 ps. per sq.feet and market value of the lands in Group I was Rs.10/- per sq.meter i.e. 93 paise per sq.feet. He valued lands in group III at Rs.1.25 per sq.meter i.e. 11 ps. per sq.feet. A perusal of the impugned Judgment shows that the Reference Court has relied upon the sale instances at Exh.37 and 38. The Reference Court has accepted the said two sale instances as comparable to the acquired lands. The learned Judge has recorded a finding that the lands falling in Group II were used for non-agricultural purpose from the year 1940 when the

same were requisitioned for military purpose. The learned Judge has noted that the land bearing Survey No.179 which was one of the sale instances relied upon has no access which was sold as an agricultural land and the land from Group III also did not appear to have access but were used for non-agricultural purposes since the requisition in the year 1940. However, he found that most of the lands falling in Group II were having frontage at Kurkumbh Road. Therefore, the learned Judge held that the market value of the land falling in Group II was 15 paise per sq.ft. On the basis of the evidence of the expert, the learned Judge came to the conclusion that so far as the lands falling in Group III are concerned, they are little away from Daund habitation and that is the reason he fixed the market value of the said land at the rate of 9 paise per sq.ft. though the sale instance of land bearing Survey No.179 disclosed the rate of 11 paise per sq.ft. The market value for the acquired lands falling in Group II was fixed at 15 paise per sq.ft. and market value of the lands falling in Group I was at 25 paise per sq.ft.

6. The Apex Court in the case of Krishna Yachendra Bahadurvaru v/s. The Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and others (AIR 1979 S.C. page 869) held that in a Reference under

section 18 of the said Act, estimation of market value in many cases must depend largely on evaluation of many imponderables and hence it must necessarily to some extent a matter of conjecture or guess work. In the present case the finding of the Reference Court is based on sale instances at Exh.37 and 38 which have been admitted in evidence by consent of the parties. On the basis of the market value found in the said sale instances, the learned Reference Court has fixed the market value of the lands falling in the three groups. In my view the assessment of market value made by the Reference Court appears to be just and reasonable.

7. Shri Tated submitted that some of the acquired lands were agricultural lands and some of the lands were undeveloped lands. He, therefore, submitted that as consistently held by the Apex Court deduction on account of development charges ought to have been made. It is well settled that deduction of development charges varies from place to place, area to area, and the amount of development which is required to be carried out and hence there cannot be any straight-jacket formula for determining the amount of development charges. This view is taken by the Apex Court in the case of Tejumal Bhojwani (dead) through LRs. & others v/s. State of U.P. ((2003) 10 SCC page 525).

8. On this aspect it will be necessary to keep in mind that the acquired lands were requisitioned in the year 1940-41 by the then Government of India on account of exigencies of second world war. In paragraph 18 of its judgment, the Reference Court has recorded a finding that the acquired lands were already being used for residential quarters, offices, play grounds etc. when the acquired lands were in the possession of the Military and in the year 1951 the lands were handed over to the State Reserve Police force. The finding is that most of the lands were put to non-agricultural use on the date of publication of notification under section 4 of the said Act. Thus the acquisition related to the lands which were already requisitioned in the year 1940-41 on account of exigencies of the second world war. Thus the acquisition related to the lands which were already developed and put to non-agricultural use. Hence, in view of these facts, it is not necessary to make any deduction on account of development charges.

9. In this view of the matter, there is no merit in the First Appeal. So far as the cross objections are concerned, I find that the Reference Court has already granted all statutory benefits under sections 23(1-A),

23(2) and 28 of the said Act to the Claimants.

10. Hence the following order is passed:

i) The First Appeals and the Cross Objections are dismissed.

ii) No order as to costs.

Judge.